



Federal Communications Commission
Washington, D.C. 20554

February 12, 2021

DA 21-169

SMALL ENTITY COMPLIANCE GUIDE

**Expanding Consumers' Video Navigation Choices;
Commercial Availability of Navigation Devices**

**FCC 20-124; MB Docket No. 16-42, CS Docket No. 97-80
Released September 4, 2020**

This Guide is prepared in accordance with the requirements of section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

Section 629 of the Communications Act of 1934 orders the Commission to adopt regulations assuring the commercial availability of devices that consumers use to access multichannel video programming and other services offered over multichannel video programming networks.¹ In simpler terms, under section 629, the Commission was required to adopt rules to make it easier for retailers to sell cable boxes and other equipment that subscribers can use to access cable and satellite service. As a result, after a series of rulemakings, the Commission adopted regulations to ensure the commercial availability of these devices,² thus leading to the “CableCARD” standard,³ which allows viewers to receive digital cable services by attaching their own equipment directly to the cable network.

In addition, the Commission adopted a series of rules regarding the CableCARD standard: in 1998, the Commission adopted rules implementing section 629 that required cable operators to use a standardized accessory that consumers could use to decrypt or descramble cable services with their own television sets and set-top boxes (before adoption of these rules, only set-top boxes leased from the cable operator could decrypt or descramble cable services). The Commission did not impose a specific security standard that cable operators needed to use for those accessories in that 1998 order.⁴ In 2003, the Commission adopted the CableCARD standard as the preferred method for digital cable operators to use in implementing the separation of security requirement for navigation devices.⁵ In 2005, to better monitor support for the CableCARD technology, the Commission required the six largest cable operators to submit status reports to the Commission every ninety days, detailing how they meet their obligations to deploy and support CableCARD.⁶ And finally, in 2010, the Commission adopted consumer-support rules intended to improve cable operators’ support for CableCARDs used in consumer-owned devices.⁷

¹ 47 U.S.C. § 549(a).

² See *Expanding Consumers’ Video Navigation Choices; Commercial Availability of Navigation Devices*, MB Docket No. 16-42 and CS Docket No. 97-80, Notice of Proposed Rulemaking & Memorandum Opinion and Order, 31 FCC Rcd 1544, 1547-49, paras 6-8 (2016).

³ A CableCARD is a security device provided by an MVPD that can be installed in a navigation device bought by a consumer in the retail market to allow the consumer’s television to display MVPD-encrypted video programming. *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80 and PP Docket No. 00-67, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657, 14659, para. 3 (2010) (*Third Plug and Play Report and Order*), recon. granted in part sua sponte, Order on Reconsideration, 26 FCC Rcd 791 (2011).

⁴ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Report and Order, 13 FCC Rcd 14775, 14793-803, paras. 49-69 (1998).

⁵ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80 and PP Docket No. 00-67, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885 (2003), recon. granted in part, Order on Reconsideration, 31 Communications Reg. (P&F) 408 (2003), vacated sub nom., *Echostar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013).

⁶ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Second Report and Order, 20 FCC Rcd 6794, 6814-15, para. 39 (2005).

⁷ *Third Plug and Play Report and Order*, 25 FCC Rcd at 4307-10, paras. 12-18; 47 CFR § 76.1205(b)

In the *Report and Order* in MB Docket No. 16-42 and CS Docket No. 97-80, the Commission eliminates the requirement that large cable operators report to the Commission every ninety days regarding the support and deployment of CableCARD modules because the information required in the reports is repetitive, has little relevance today, and filing the reports is more burdensome to the cable operators than it is beneficial to the Commission. Additionally, the Commission eliminates the CableCARD consumer-support rules because the requirements no longer serve a useful purpose following the D.C. Circuit's 2013 decision in *Echostar* and, thus, are no longer necessary. In *Echostar*,⁸ the court vacated the two 2003 Orders adopting the CableCARD standard as the required method used by all MVPD's in implementing the separation of security requirements for navigation devices. Although the CableCARD support rules were not adopted in either of the 2003 Orders vacated in *Echostar*,⁹ these rules expressly only apply to MVPDs that are "subject to the requirements of § 76.640."¹⁰ Since there are no longer any MVPDs that are subject to § 76.640, the CableCARD support rules no longer serve a useful purpose and are, therefore, eliminated.

II. COMPLIANCE REQUIREMENTS

The *Report and Order* eliminates the CableCARD support rules that (1) required cable operators to support the reception of switched digital video services on retail CableCARD devices to ensure that subscribers were able to access the services for which they pay regardless of whether they leased or purchased their devices; (2) prohibited price discrimination against retail CableCARD devices to support a competitive marketplace for such devices; (3) required cable operators to allow self-installation of CableCARDS where device manufacturers offered device-specific installation instructions to make the installation experience for retail devices comparable to the experience for leased devices; (4) required cable operators to provide multi-stream CableCARDS by default to ensure that cable operators are providing their subscribers with modern CableCARD technology; and (5) clarified that CableCARD device certification rules were limited to certain technical features to make it easier for device manufacturers to get their products to market.¹¹

III. RECORDKEEPING AND REPORTING REQUIREMENTS

⁸ *Echostar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013). The court concluded that the Commission lacked the authority under section 629 of the Act to impose encoding rules, which put a ceiling on the recording limits that MVPDS can impose, on satellite on satellite carriers. The Commission argued that the encoding rules were not severable from the rest of the rules adopted in the 2003 Orders (including the rule that imposes the CableCARD standard), and therefore the court vacated both of the Orders.

⁹ The CableCARD consumer support rules were adopted in 2010 in the *Third Plug and Play Report and Order* and revised in the *2011 Reconsideration Order*.

¹⁰ Section 76.640 required digital cable systems to support unidirectional digital cable products such as televisions, set-top boxes, and recording devices connected to digital cable systems by providing to subscribers CableCARDS and related services that meet certain technical standards.

¹¹ *Third Plug and Play Report and Order*, 25 FCC Rcd at 4307-10, paras. 12-18. 47 CFR § 76.1205(b)

The Commission's actions in the *Report and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

The rules as amended in the *Report and Order* are effective upon publication of a summary in the Federal Register; the summary was published in the Federal Register on December 4, 2020.

V. INTERNET LINKS

A copy of the *Report and Order* is available at:

<https://docs.fcc.gov/public/attachments/FCC-20-124A1.pdf>

A copy of the Federal Register Summary of the *Report and Order* is available at:

<https://www.federalregister.gov/documents/2020/12/04/2020-25143/expanding-consumers-video-navigation-choices-commercial-availability-of-navigation-devices>